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In the Supreme Court of the United States

OCTOBER TERM, 1923.

DEWITT GARRISON BROWN AND ROOSA C. BROWN, plaintiffs in error, v. THE UNITED STATES OF AMERICA. — No. 97.

THE UNITED STATES OF AMERICA, PLAINTIFF in error, v. DEWITT GARRISON BROWN AND ROOSA C. BROWN. — No. 98.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF IDAHO.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The case comes to this court from the District Court direct, on the ground that it involves the construction and application of the Constitution of the United States and the validity of a statute of the United States. Judicial Code, 238.

The proceeding was to condemn lands for the purposes of the Reclamation Service, and the basic

matters affecting the right to condemn are set out in a letter from the First Assistant Secretary of the Interior to the Attorney General, dated April 21, 1921, which contained the following (R. 20):

> Under the authority of the National Irrigation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, the United States Reclamation Service is now engaged in work preliminary to the construction of a large dam across the Snake River at American Falls, Idaho, which dam is intended to be used in connection with an extension of the Minidoka Federal Irrigation project.
>
> The proposed reservoir would flood a major portion of the land now included within the corporate limits of the City of American Falls, a town of about 1,500 people. Our plan is to develop a new town just outside the limits of the present town and above the high-water line of the proposed reservoir, purchasing or condemning the lands within the submerged area and, where practicable, making an exchange of lots and removing houses and other improvements from the old town site to the new town site. An adjustment of this kind would permit the Government to secure the required area for the reservoir at much less expense than would otherwise be the case, and consequently would make the construction of the reservoir more feasible through a reduction of cost.
>
> The Sundry Civil Appropriation Act of March 4, 1921 (41 Stat. 1367, 1403), contains the following provision:

"Minidoka project, Idaho: For operation and maintenance, continuation of construction, and incidental operations, with authority in connection with the construction of American Falls Reservoir, to purchase or condemn and to improve suitable land for a new town site to replace the portion of the town of American Falls which will be flooded by the reservoir, and to provide for the removal of buildings to such new site and to plat and to provide for appraisal of lots in such new town site, and to exchange and convey such lots in full or part payment for property to be flooded by the reservoir, and to sell for not less than the appraised valuation any lots not used for such exchange, $1,735,000, together with the unexpended balance of the appropriation for this project for the fiscal year 1921."

The United States has already acquired by purchase 495 acres of land for the proposed town site and desires to secure title to an additional and adjoining 120 acres owned by DeWitt G. Brown, in order to make the town site of sufficient size to meet the needs above described. * * *

The United States has attempted to acquire title to the lands in question, but has been unable to agree with the owner upon a purchase price. The estimated value of said land is less than $12,000, and the Reclamation Service has available a sufficient amount of unencumbered funds to meet any court award that might be made in proceedings brought to secure the condemnation of said property.

> I find that the United States requires the 120 acres of land above described for a town site as an incident to making more feasible the construction of the proposed American Falls dam for Federal irrigation purposes, and accordingly it is requested, under the authority of Section 7 of said Act of June 17, 1902, that you instruct the United States Attorney for the District of Idaho to cause proceedings to be commenced for condemnation of the lands in question, and that in such proceedings fee simple title be secured to the United States.

About 640 acres, being about three-fourths of the present town site, will be flooded (R. 23) and this will require the removal of about 1,125 people (R. 28). The new town site selected is smaller than the flooded portion of the old town site. (R. 24, 25.)

The court below rendered an opinion upholding the right of the United States to take the land for the purpose specified in the act of Congress. (R. 30; 279 Fed. 168.)

A jury then found the value of the land, as of June, 1921, when the summons was issued, to be $6,250. The court having reserved for its own determination the question of interest, then added to the amount found by the jury the sum of $328.12 as interest from the service of summons to the date of the final determination, and entered judgment accordingly.

The sole questions raised by the defendants' assignments of error are as to the power of the United States to condemn the lands for the purposes indi-

cated, and as to the validity of the act of Congress authorizing the condemnation.

The sole question raised by the assignments of error of the United States is as to the correctness of that part of the judgment awarding interest on the value of the land as found by the jury.

ARGUMENT.

I.

The United States has power to condemn lands for purposes of a town site under the circumstances shown by the act of Congress and the Secretary's letter.

The necessity for the taking and the use to be made of the property had its origin in exceptional circumstances connected with recent extensions of governmental activities. But the courts apply old principles to the new conditions and "organic relations of modern society." *Mt. Vernon Cotton Co.* v. *Alabama Power Co.*, 240 U. S. 30, 32. "Governmental power must be flexible and adaptive." *Eubank* v. *Richmond*, 226 U. S. 137, 143. It is fundamental that private property can not be condemned for private use, and cases applying that principle are numerous. But in determining whether a particular use or purpose is public or private two principles are to be kept in mind.

1. When the sovereign itself seeks to exercise the power of eminent domain the presumption that the intended use is a public one is much stronger than in cases where private corporations seek to condemn

under authority delegated to them by the sovereign. *United States* v. *Gettysburg Electric Ry. Co.*, 160 U. S. 668, 680.

2. When the legislature itself expressly declares the purpose or use to be a public one, or, what amounts to the same thing, expressly authorizes a taking for a use specifically described, its judgment will be accepted by the courts, unless the use is palpably without reasonable foundation. In such cases the question becomes one of the constitutionality of the statute authorizing the taking; every intendment is in favor of its validity; and it will be sustained unless shown to be clearly and unmistakably invalid. The *Gettysburg case*, *supra*, p. 680; *Sweet* v. *Rechel*, 159 U. S. 380, 392, 393; *Shoemaker* v. *United States*, 147 U. S. 282, 297; *Mt. Vernon Cotton Co.* v. *Alabama Power Co.*, 240 U. S. 30, 32; *Union Lime Co.* v. *Chicago & N. W. Ry. Co.*, 233 U. S. 211, 218.

Both these rules apply to the present case. The United States itself is condemning the lands; and Congress specially authorized the taking and specifically described the purpose and use.

In the *Gettysburg case* the court said (p. 680):

> In these acts of Congress and in the joint resolution the intended use of this land is plainly set forth. It is stated in the second volume of Judge Dillon's work on Municipal Corporations (4th ed. sec. 600), that when the legislature has declared the use or purpose to be a public one, its judgment will be respected by the courts, unless the use be

palpably without reasonable foundation. Many authorities are cited in the note, and, indeed, the rule commends itself as a rational and proper one.

As just compensation, which is the full value of the property taken, is to be paid, and the amount must be raised by taxation where the land is taken by the government itself, there is not much ground to fear any abuse of the power. The responsibility of Congress to the people will generally, if not always, result in a most conservative exercise of the right. It is quite a different view of the question which courts will take when this power is delegated to a private corporation. In that case the presumption that the intended use for which the corporation proposes to take the land is public, is not so strong as where the government intends to use the land itself.

In examining an act of Congress it has been frequently said that every intendment is in favor of its constitutionality. Such act is presumed to be valid unless its invalidity is plain and apparent; no presumption of invalidity can be indulged in; it must be shown clearly and unmistakably. This rule has been stated and followed by this court from the foundation of the government.

If it be said that the United States is not itself to actually and finally use or occupy the lands either by its agents or employees, or by any structure directly connected with the exercise of its sovereign or proprietary powers, the answer is that the same was true of the property condemned in the *Gettysburg*

case and in *Shoemaker* v. *United States*, 147 U. S. 282. In the former the lands and property were taken for the purpose, as described in the acts of Congress, for preserving the site of a great and decisive battle of the Civil War, for properly marking with tablets, etc., the positions occupied by various commands of the two armies, for opening and improving avenues along the positions of the various organizations engaged, with reference to the study and correct understanding of the battle, etc. In the *Shoemaker case* the lands were to be perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States (p. 284).

In the present case the Government, by a public improvement which it had undoubted power to make, was about to flood the larger part of a considerable town and destroy at one time the homes and places of business of over 1,100 people. Unless it made provision for them by establishing a new town site, they must necessarily scatter abroad to seek homes elsewhere; or, if they desired to remain in the immediate vicinity, they must necessarily compete with each other in purchasing new sites for homes and business under conditions laying them open to the exactions of landowners and speculators. Under these circumstances Congress apparently felt that there was a moral obligation on the Government to provide them with a new town site where, by the appraisal of lots in advance and their exchange or sale by Government officials, they would

be protected from such hardships and exactions. Moreover, as was very justly and truly said by the court below (R. 31, 32):

> The conditions are exceptional. The major part of an improved and occupied town site is essential to the execution of a great public work. Vested rights there are in great variety and complexity, public as well as private. It is fair to assume that on the town site are streets and avenues, sidewalks, water pipes, sewers, schoolhouses, and possibly other public structures. The right to condemn may be doubtful, and even if the right be assumed, the process of procuring title, necessarily intricate and difficult. By providing and improving an equivalent site in close proximity the Government may, by voluntary action on the part of private owners and the public, be able to acquire rights which otherwise it would be impossible or at least extremely difficult to extinguish.

In the *Gettysburg case* the court, referring to the fact that power to condemn lands was not *expressly* given to Congress by the Constitution, said (p. 681) that such power—

> results from the powers that are given, and it is implied because of its necessity or because it is appropriate in exercising those powers.

The court then quoted from the opinion of Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat. 316, 421, the well-known sentence:

> Let the end be legitimate, let it be within the scope of the Constitution, and all means

> which are appropriate, which are plainly adapted to that end, *which are not prohibited*, but consist with the letter and spirit of the Constitution, are constitutional.

In *Sweet* v. *Rechel*, 159 U. S. 380, 392, 393, the court, speaking of a Massachusetts act authorizing the City of Boston to take a body of land for a purpose specified, said—

> * * * it was necessarily implied that the exercise of the power must have some real, substantial relation to the general good and welfare. But in determining whether the legislature, in a particular enactment, has passed the limits of its constitutional authority, every reasonable presumption must be indulged in favor of the validity of such enactment. It must be regarded as valid, unless it can be clearly shown to be in conflict with the constitution.

The subject of the exercise of the power of eminent domain furnishes a striking illustration of how legislation and decision follow and adapt themselves to the exigencies created by the rapid development of modern society. In the *Shoemaker case*, *supra*, decided in 1893, the court said (p. 297):

> In the memory of men now living, a proposition to take private property, without the consent of its owner, for a public park, and to assess a proportionate part of the cost upon real estate benefited thereby, would have been regarded as a novel exercise of legislative power.

The court then showed that in the older cities and towns there were often *commons* or public grounds, generally laid out when the town was platted, not as places for exercise and recreation but for common pasturage of domestic animals; and that in Johnson's Encyclopædia it was stated that the first place deliberately provided for exclusive use as a pleasure ground for rest and exercise in the open air was Central Park, New York. The court then added (p. 297):

> The validity of the legislative acts erecting such parks, and providing for their cost, has been uniformly upheld. It will be sufficient to cite a few of the cases. *Brooklyn Park Commissioners* v. *Armstrong*, 45 N. Y. 234; *In re Commissioners of the Central Park*, 63 Barb. 282; *Owners of Ground* v. *Mayor of Albany*, 15 Wend. 374; *Holt* v. *Somerville*, 127 Mass. 408; *Foster* v. *Boston Park Commissioners*, 131 Mass. 225; also 133 Mass. 321; *St. Louis County Court* v. *Griswold*, 58 Missouri, 175; *Cook* v. *South Park Commissioners*, 61 Illinois, 115; *Kerr* v. *South Park Commissioners*, 117 U. S. 379.

In *Mt. Vernon Cotton Co.* v. *Alabama Power Co.* 240 U. S. 30, the court upheld a State statute authorizing a private power company to condemn lands and water rights to create electric energy for sale to the public generally. In the course of the opinion the following striking passage occurs (p. 32):

> In the organic relations of modern society it may sometimes be hard to draw the line that is supposed to limit the authority of the legis-

> lature to exercise or delegate the power of eminent domain. But to gather the streams from waste and to draw from them energy, labor without brains, and so to save mankind from toil that it can be spared, is to supply what, next to intellect, is the very foundation of all our achievements and all our welfare. If that purpose is not public we should be at a loss to say what is. The inadequacy of use by the general public as a universal test is established. *Clark* v. *Nash*, 198 U. S. 361; *Strickley* v. *Highland Boy Mining Co.*, 200 U. S. 527, 531. The respect due to the judgment of the State would have great weight if there were a doubt. *Hairston* v. *Danville & Western Ry. Co.*, 208 U. S. 598, 607; *O'Neill* v. *Leamer*, 239 U. S. 244, 253. But there is none. See *Otis Co.* v. *Ludlow Manufacturing Co.*, 201 U. S. 140, 151.

And so this court has affirmed the power of State legislatures to create irrigation and drainage districts and authorize the condemnation of lands for the purposes of irrigation and drainage; *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112; *O'Neill* v. *Leamer*, 239 U. S. 244; *Houck* v. *Little River Drainage District*, 239 U. S. 254; and indeed has gone the length of sustaining the taking by one individual of a right of way through the lands of another for an irrigation ditch where a State statute expressly authorized such taking, *Clark* v. *Nash*, 198 U. S. 361; and also, when authorized by State statute, the condemnation by a private mining company of a right of way for an aerial bucket line

across the placer mining claims of another, *Strickley* v. *Highland Boy Mining Co.*, 200 U. S. 527.

It is no objection to a taking by the United States for the primary purpose of improving navigation that the statute authorizing the taking also provides for the incidental purpose of developing water power "either for the direct use of the United States, or by lease * * * through the Secretary of War." *United States* v. *Chandler-Dunbar Co.*, 229 U. S. 53, 72, 73. And a State statute of similar purport was upheld in *Kaukauna Co.* v. *Green Bay, &c. Canal*, 142 U. S. 254, 273.

II.

The need of land and homes for the large number of additional workmen, necessarily to be employed in the building of the dam and other improvements, made the taking one for a direct public use of the United States.

In the petition it was alleged that the land was desired in part for the housing of workmen employed in constructing the dam. F. A. Banks, construction engineer for the proposed dam and reservoir, with large experience in designing and constructing similar works for the Reclamation Service, testified for the Government that about 1,000 men would be employed on the construction work. As the town contained only about 1,500 people all told, it is obvious that many of these men would come from other places, and some would bring their families. Mr. Banks further testified that it tended to efficiency and economy to provide homes and plots of ground for

gardens for these men and their families, thus holding them to their jobs (R. 23); that it would take about four years to construct the first unit of the dam, and there would be an interval of ten or fifteen years before the irrigation development would justify the construction of the dam to its full height, and would then take four years more to complete it (R. 24); and that it was the intention of the officials to use portions of the new town site, including the lands of the defendant, for government employees.

The court below expressed the opinion that this allegation and testimony could not be considered, first, because the construction engineer was not authorized to speak for the Government, saying that the Secretary in his letter to the Attorney General had stated that the land was needed for a new town site, without intimating any other use, and no other could properly be alleged or proved; and second, because the testimony did not show definitely where within the new town site the employees were to be located. (R. 30.)

It seems to us that the court was clearly in error. The additional use was not inconsistent with the purposes specified by the Secretary, and it is not to be conclusively presumed that the Secretary, in requesting condemnation, would set out all the uses to which the land was to be put.

In any event the court, we think, will take judicial notice of the geographical facts as to this isolated community; the need of additional workmen from

other places; that they would come and, in some instances at least, bring their families with them, and that it would be necessary to provide housing for them. In this view there was need of the lands for an additional and direct public use of the United States arising out of the necessities and surroundings of the geographical location of a work of such magnitude.

III.

With reference to the incorporated town of American Falls, the taking was for a municipal public purpose, in the narrow sense.

The taking was for the direct relief and advantage of three-fourths of the inhabitants and for the general good and prosperity of all. To illustrate, let us suppose that Idaho were still a Territory and all the other conditions were as at present, and Congress, to provide for the people of the area to be flooded and in the exercise of its plenary power of legislation over the Territories, had, by special act, delegated to the town the power of eminent domain for the purpose of acquiring land for their immediate accommodation, and for ultimate sale to them at appraised prices. Could it be said that it was not an appropriate and legitimate municipal function to thus care for the displaced inhabitants, and that the act was beyond the constitutional power of Congress? We think not. But what Congress could thus have done indirectly and by delegation it certainly could have done, under the same circumstances, directly, and in

the name of the United States. Does the existence of the State make any difference? The purpose is none the less a public one of the municipality, and the exigency to be met was caused by the action of the United States.

When we connect with this municipal public purpose the direct benefits accruing to the United States, and its obligation to provide for the inhabitants driven wholesale from their homes and places of business, it seems to us that the public use is so fully demonstrated as to dispel all doubt of the validity of the statute.

In this connection it is to be noted that the public purpose need not necessarily be a public purpose, exclusively, of the sovereign by whose authority the lands are condemned. In earlier times it was the common practice for the States to condemn lands for the use and benefit of the General Government by exercising their own powers of eminent domain, and this was generally held to be a proper and lawful use of their sovereign powers. *Reddall* v. *Bryan*, 14 Md. 444; *In re League Island*, 1 Brewster (Pa.), 524, 527; *Burt* v. *Merchants' Ins. Co.*, 106 Mass. 356; *Gilmer* v. *Lime Point*, 18 Calif. 229; *Harris* v. *Elliott*, 10 Pet. 25; *contra*, *Trombley* v. *Humphrey*, 23 Mich. 471. Most of these decisions, however, lay some stress upon the fact that the use to which the Government puts the land is beneficial or advantageous to the local public.

IV.

But few of the decided cases are helpful—Pitznogle v. Western Maryland Ry. Co., 119 Md. 673.

It would be of little help to cite or analyze even a small part of the vast array of decisions, often inconsistent with each other, on the question of what constitutes a public use. Hardly any of them have a direct bearing on the exceptional case presented by the dominant feature here; namely, a use which becomes a public one of the United States because of its intimate but incidental connection with another taking unquestionably within the power of the General Government. Indeed, an extended search has disclosed only one case closely analogous, namely, *Pitznogle* v. *Western Md. R. R. Co.*, 119 Md. 673. There the Railway Company took, under delegated power, for the purpose of its tracks and yards, a piece of land together with a private right of way thereover which constituted the only access of certain private citizens to a public highway; and it was held that the Railway Company could condemn an additional strip of land for a substitute right of way. In reaching this conclusion, the court said (p. 679):

> The condemnation of a part of this land, here sought to be condemned, for a substitute private road or way is incident to and results from the taking, by reason of public necessity, of the existing private road for public use, and the use of it for such purposes should, we think, be regarded as a public use within the meaning of the Constitution.

That case, indeed, goes further than the c
needs to go to uphold the taking in the present
where nearly three-fourths of the inhabitants
whole town are vitally interested in the substi
town site.

See also *Beauchamp* v. *Great Western Ry. Co.*, L
3 Ch. App. 745 (1868), which was very similar i
essential features.

Many of the cases already cited and discussed s
that the term "public use" is flexible and adapt
and, to a large degree, a matter of times, pl
special conditions, special necessities, and e
gencies; and the following additional decisions
directly to that effect: *State* v. *Thurston County*
Wash. 660, 667; *Concord Railroad* v. *Greely*
N. H. 47, 58; *Potlatch Lumber Co.* v. *Peterson*
Idaho, 769, 783; *Tanner* v. *Treasury Tunnel*
Co., 35 Colo. 593; *Paxton* v. *Farmers Irrigation*
45 Nebr. 884; *Scudder* v. *Trenton Delaware Falls*
1 N. J. Eq. 694, 728, 729; *Billings Sugar Co.* v.
40 Mont. 256, 271.

As the taking here is by the sovereign itself,
Congress in specifying the use has deliberately d
mined it to be a public one, it seems to us enti
clear, on the facts appearing and the author
cited, that the court can not find the taking t
so palpably for other than a public use as to req
a decision holding the law unconstitutional.

V.

Interest was not payable because defendant remained in exclusive possession up to the time of the judgment.

As appears by the judgment, the award fixed the value of the lands as $6,250 *at the date of the summons.* (R. 19.) The defendant himself testified that the only interference with his possession or use of the land "consists of the commencement of this suit and the issuance of summons therein, and the service thereof upon the defendant in June, 1921." (R. 33.) It is clear, therefore, that he was still in the possession and use of the lands at the time of the award and judgment. The court, having reserved to itself the question of interest, thereupon awarded interest in the sum of $328.12, being at the rate of seven per cent (7%) from the date of the summons to the date of the judgment.

The awarding of interest constitutes the only error assigned or relied on by the United States.

We take it as now finally settled that when private lands are appropriated or condemned by the United States, the owner is entitled to interest from the time he was actually deprived of possession and use, and that it is proper, but not mandatory, to allow interest at the rate prescribed by the local statutes. *United States* v. *Rogers*, 255 U. S. 163; *Seaboard Air Line Ry. Co.* v. *United States*, 261 U. S. 299. Those decisions go no further.

In *Shoemaker* v. *United States*, 147 U. S. 282, however, it was just as clearly settled that interest is not allowable pending condemnation proceedings where the defendant has not yet been dispossessed. There the court said (pp. 320, 321):

> The fourteenth assignment charges the court with error in refusing to allow interest on the amounts assessed as the values for lands selected for the Rock Creek Park. The argument shows that the interest claimed was for the time that elapsed between the initiation of the proceedings and the payment of the money into court. The vice of this contention is in the assumption that the lands were actually condemned and withdrawn from the possession of their owners by the mere filing of the map. Interest accrues either by agreement of the debtor to allow it for the use of money or, in the nature of damages, by reason of the failure of the debtor to pay the principal when due. Of course, neither ground for such a demand can be found in the present case. No agreement to pay the interest demanded is pointed to, and no failure to pay the amount assessed took place. That amount was not fixed and ascertained till the confirmation of the report. Then some of those entitled to the assessments accepted their money, the plaintiffs in error declined to accept, and the amounts assessed in their favor were paid into court, which must be deemed equivalent to payment.
>
> It is true that, by the institution of proceedings to condemn, the possession and en-

joyment by the owner are to some extent interfered with. He can put no permanent improvements on the land, nor sell it, except subject to the condemnation proceedings. But the owner was in receipt of the rents, issues, and profits during the time occupied in fixing the amount to which he was entitled, and the inconveniences to which he was subjected by the delay are presumed to be considered and allowed for in fixing the amount of the compensation. Such is the rule laid down in cases of the highest authority. *Reid* v. *Hanover Branch Railroad*, 105 Mass. 303; *Kidder* v. *Oxford*, 116 Mass. 165; *Hamersley* v. *New York City*, 56 N. Y. 533; *Norris* v. *Philadelphia*, 70 Penn. St. 332; *Chicago* v. *Palmer*, 93 Illinois, 125; *Phillips* v. *South Park Commission*, 119 Illinois, 626.

To the same effect was *Bauman* v. *Ross*, 167 U. S. 48, 598; also *United States* v. *Town of Nahant* (C. C. A.), 153 Fed. 520, 525; *Town of Hingham* v. *United States* (C. C. A.), 161 Fed. 295, 299.

The *Shoemaker* and *Bauman* cases both involved lands in the District of Columbia, and in the case at bar the lands are in the State of Idaho. But the right to interest is obviously not a matter of procedure but of substantive right. It is not, therefore, affected by the statutory rule of conformity to State laws in condemnation proceedings. In takings by the United States the only criterion is the "just compensation" of the Constitution. *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 341;

Bauman v. *Ross, supra,* p. 574; *Seaboard Air Li*
Ry. Co. v. *United States,* 261 U. S. 299.

Whether just compensation requires the allowan
of interest in any particular case is to be determine
by general principles of jurisprudence, not by th
laws of the State in which the property lies. In th
Rogers case, supra, the court said (p. 169):

> The Government urges that the Conformit
> Act of August 1, 1888, does not require th
> United States Government to be bound by th
> rule of the state statute in the allowance
> interest. This may be true, but we agr
> with the courts below that the allowance
> just compensation by giving interest from th
> time of taking until payment is a convenie
> and fair method of ascertaining the sum
> which the owner of the land is entitled. Th
> fact that the rule is in harmony with the polic
> of the State where the lands are situated do
> not militate against but makes for the justi
> and propriety of its adoption.

To this passage the court cited *United States*
Sargent, 162 Fed. 81; and in the latter case the Ci
cuit Court of Appeals said (p. 84):

> Without holding that the requirement f
> payment of interest is one of the "modes
> proceeding," which, by Section 2 of the Act
> August 1, 1888, is made compulsory upon th
> courts of the United States, we are satisfied
> conform to it as a palpably fair and reasonab
> method of performing the indispensable co
> dition to the exercise of the right of emine

> domain, namely, of making "just compensation" for the land as it stands, at the time of taking.

In *Seaboard Air Line Ry. Co.* v. *United States*, 261 U. S. 299, 305, the court, speaking of the *Rogers case*, *supra*, said:

> Interest was allowed, not by virtue of state statute, but as constituting a part of the just compensation safeguarded by the Constitution.

In *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 313, Congress, in authorizing the taking, had declared that "in estimating the sum to be paid by the United States, the franchise of said corporation to collect tolls shall not be considered or estimated;" and in reference to this provision the court said that under the Constitution the measure of compensation was a judicial, not a legislative, question, and Congress could not "say what compensation shall be paid, or even what shall be the rule of compensation" (p. 327); and compensation was in fact given for the franchise to take toll notwithstanding the congressional inhibition.

If Congress can not prescribe the rule of compensation for takings by the United States, State legislatures certainly can not.

In the present case, it does not appear whether the District Court, in allowing interest, followed a local statute or rule, but obviously that is immaterial. Under the circumstances, just compensation did not include interest, for the defendants remained in the possession and use of the lands.

CONCLUSION.

The judgment should be reversed with directions to enter a judgment for the amount of the award alone.

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